

No. 617

IN THE
Supreme Court of the United States

October Term, 1952

DISTRICT OF COLUMBIA, *Petitioner,*

v.

JOHN R. THOMPSON COMPANY, INC., *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE DIS-
TRICT OF COLUMBIA CIRCUIT.

REPLY BRIEF FOR THE DISTRICT OF COLUMBIA
AND THE UNITED STATES

For the District of Columbia: For the United States:

VERNON E. WEST,
Corporation Counsel.

HERBERT BROWNELL, JR.,
Attorney General.

CHESTER H. GRAY,
*Principal Assistant
Corporation Counsel.*

ROBERT L. STERN,
*Acting Solicitor
General.*

PHILIP ELMAN,
*Special Assistant to
the Attorney General.*

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The ultimate issue in this case is whether the Acts of 1872 and 1873 enacted by the Legislative Assembly of the District of Columbia are now in effect. The Court of Appeals has held that they are not, and the chief reasons for review of the decision below are to be found in the broad grounds on which it was placed, principally that Congress cannot delegate local legislative authority to the District of Columbia.

Respondent deals with the question whether this is an appropriate case for certiorari as though the Court of Appeals had based its decision on the narrow ground that, solely as a matter of construction of the District of Columbia Code of 1901 (31 Stat. 1489), the Acts of 1872 and 1873 had been repealed, and that hence there was no necessity to

pass upon their validity. In fact, however, the Court of Appeals did not dispose of the case on so narrow a basis. On the contrary, the crucial ruling upon which the decision rests, and in which all of the judges comprising the majority concurred, is that Congress has no power under the Constitution to delegate local legislative authority to the District of Columbia.

This ruling upon what is, intrinsically and practically, an important question of constitutional law lies at the heart of the decision below. If unreviewed, it will stand as the authoritative determination of that question. The question cannot, of course, be litigated in another circuit; and in the District of Columbia Circuit its authority, as a decision of the full court sitting in banc, will not be questioned. If the decision below is left undisturbed, it will be the controlling judicial ruling upon the power of Congress to legislate for the District of Columbia, and Congress and the bar will undoubtedly so regard it.

Respondent in its brief in opposition, however, asserts that the District of Columbia and the United States, in requesting review of this constitutional determination by the Court of Appeals, are seeking an "advisory" opinion upon a "hypothetical" issue. Respondent seems to assume that the constitutional holding of the Court of Appeals (which bulks so large in the opinions below) had no effect whatsoever upon its decision, and that the question of repeal *vel non* under the 1901 Code was treated as wholly independent of, and separate from, the determination of the constitutional question. But even a casual reading of the opinions of Chief Judge Stephens and Judge Prettyman shows that the majority below regarded the two issues as interrelated. (See, esp., R. 85, 99.)¹

¹ After devoting more than 20 pages of his opinion to the "constitutional provisions and principles" bearing on the validity of the 1872 and 1873 Acts, and having reached the conclusion that the Acts were invalid "general legislation", Chief Judge Stephens stated that this conclusion "requires the further conclusion that they [the Acts] were repealed by the District of Columbia Code of 1901 . . ." (R. 85.) Judge Prettyman stated that if the Acts "were general legislation they were void from the beginning and in any event were repealed by the 1901 Code." (R. 99.)

Rule 38 (5) of the Rules of this Court sets forth some of the "special and important reasons" which may justify review on certiorari. Subparagraph (c) refers specifically to review of decisions of the Court of Appeals for the District of Columbia Circuit:

Where the United States Court of Appeals for the District of Columbia has decided a question of general importance, or a question of substance relating to the construction or application of the Constitution, or a treaty or statute, of the United States, which has not been, but should be, settled by this court; or where that court has not given proper effect to an applicable decision of this court.

It is respectfully submitted that, in the context in which this case was decided below and is presented here, the decision of the Court of Appeals restricting the constitutional power of Congress to delegate local legislative authority to the District of Columbia is neither "abstract" nor "hypothetical", and that there exist in this case the "special and important reasons" for review indicated by Rule 38 (5) (c).

Respectfully submitted,

For the District of Columbia: For the United States:

VERNON E. WEST,
Corporation Counsel.

HERBERT BROWNELL, JR.,
Attorney General.

CHESTER H. GRAY,
*Principal Assistant
Corporation Counsel.*

ROBERT L. STERN,
*Acting Solicitor
General.*

APRIL 1953.

PHILIP ELMAN,
*Special Assistant to
the Attorney General.*